

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 DAYSEAN JENKINS,

5 Plaintiff,

6 v.

7 DANIEL SIMAS, *et. al.*,

8 Defendants.

Case No. 3:23-CV-00049-ART-CLB
**ORDER GRANTING MOTION FOR
LEAVE TO FILE SECOND AMENDED
COMPLAINT**

[ECF No. 42]

9 Before the Court is Plaintiff Daysean Jenkins's ("Jenkins") motion for leave to file
10 a first amended complaint. (ECF No. 42.) No opposition was filed. For the reasons stated
11 below, the Court grants Jenkins's motion to file a second amended complaint, (ECF No.
12 42.)

13 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

14 Jenkins is an inmate in the custody of the Nevada Department of Corrections
15 ("NDOC") and is currently housed at the Stewart Conservation Camp ("SCC"). (ECF No.
16 42 at 3.) Jenkins initiated this action on February 6, 2023, by filing a civil rights complaint
17 for events that occurred at SCC. (ECF No. 1-1.) Thereafter, Jenkins filed a First Amended
18 Complaint ("FAC") on March 14, 2023. (ECF No. 5.) Pursuant to 28 U.S.C. § 1915A, the
19 District Court screened Jenkins's FAC and allowed him to proceed on the following
20 claims: (1) an Eighth Amendment claim of deliberate indifference to unsafe prison
21 conditions against Defendants Daniel Simas and Mike Davis; and (2) an Eighth
22 Amendment Claim for deliberate indifference to serious medical needs against
23 Defendants Dr. J. Benson, Nurse Debbie, and Dr. Halki. (ECF No. 8.)

24 On February 26, 2025, Jenkins filed the instant motion for leave to file a second
25 amended complaint. (ECF No. 42.) No opposition was filed.

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II. LEGAL STANDARD

Federal Rule of Civil Procedure 15(a)(2) instructs that “[t]he court should freely give[] leave [to amend a pleading] when justice so requires.” The Ninth Circuit has made clear Rule 15(a) permits liberal application. *Sonoma Cnty. Ass’n of Retired Emps. v. Sonoma Cnty.*, 708 F.3d 1109, 1117 (9th Cir. 2013). Under Rule 15(a), courts consider various factors, including: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) the futility of the amendment; and (5) whether the plaintiff has previously amended his complaint. *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1154 (9th Cir. 2014). The factors do not weigh equally; rather, prejudice receives the greatest weight. *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th Cir. 2020) (citing *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003)).

Defendants bear the burden of establishing prejudice, and absent its presence or a “strong showing” under the other factors, there is a presumption in favor of permitting amendment. *Eminence Cap., LLC*, 316 F.3d at 1052 (citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186-87 (9th Cir. 1987)). When considering prejudice, the court may weigh against the movant the amended pleading’s great alteration of the litigation’s nature that requires the opposing party to defend against “different legal theories and . . . different facts.” *AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 953 (9th Cir. 2006) (internal quotation omitted). Alone, such alteration is not fatal. *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).

By contrast, futility “alone can justify the denial of a motion for leave to amend.” *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2003) (quoting *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995)). Futility arises when the amendment is legally insufficient, *Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017), or where the amended complaint would be subject to dismissal, such as when it violates the statute of limitations. *Platt Elec. Supply, Inc. v. EOFF Elec., Inc.*, 522 F.3d 1049, 1060 (9th Cir. 2008).

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